

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62

ORDINANCE NO. 09-273

**AN ORDINANCE ESTABLISHING DRINKING WATER SOURCE PROTECTION
REGULATIONS FOR DUCHESNE COUNTY**

WHEREAS, Duchesne County finds that safe and sanitary drinking water resources are limited and essential to protect from possible contamination; and

WHEREAS, Duchesne County desires to protect the County's drinking water resources while preserving historic lifestyles and economic values for residential, commercial, industrial and agricultural developments; and

WHEREAS, the Planning Commission of Duchesne County has held a duly advertised and noticed public hearing on the proposed Ordinance of Duchesne County, Utah for the purpose of receiving public comment regarding the content of the ordinance and has forwarded a recommendation to the County Commission that the Drinking Water Source Protection Ordinance of Duchesne County, Utah be adopted; and

WHEREAS, the County Commission of Duchesne County has held a duly advertised and noticed public hearing on the proposed Drinking Water Source Protection Ordinance for the purpose of receiving public comment regarding the content of the ordinance and has determined that public health, safety, and general welfare will be protected and promoted by this ordinance.

**NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF
COUNTY COMMISSIONERS OF DUCHESNE COUNTY, UTAH AS FOLLOWS:**

SECTION 1. SHORT TITLE AND PURPOSE.

(A) This ordinance shall be known as the "Duchesne County Drinking Water Source Protection Ordinance."

(B) The purpose of this ordinance is to ensure the provision of a safe and sanitary drinking water supply to the residents of Duchesne County, by the establishment of drinking water source protection zones surrounding the wells and springs used by Public Drinking Water Systems in the unincorporated areas of the County and by the designation and regulation of property uses and conditions that may be maintained within such zones. Included under this ordinance are those source protection zones falling within unincorporated areas of the County, associated with public drinking water sources not owned or operated by the County.

SECTION 2. DEFINITIONS. When used in this ordinance the following words and phrases shall have the meanings given in this section:

(A) "Culinary Water Authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for a subject property.

(B) "Design Standard" means established State or National Standards for the design, construction, placement, or maintenance from a potential contamination source to prevent discharges to the ground water. An example of a Design Standard is "Secondary Containment".

(C) "Drinking Water Source Protection Zone" means the specified surface and subsurface area surrounding a ground-water source of drinking water supplying a Public Water Supply, through which contaminants are reasonably likely to move toward and reach such ground-water source.

(D) "Permitted Use" means a land use, activity, or practice that does not create a risk of contamination or a relatively low risk of contamination in the specified drinking water source protection zone.

(E) "Pollution source" means point source discharges of contaminants to ground water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than 100 animal units.

The following definitions are part of R309-600 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "Title III List of Lists: Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-to-Know Act (EPCRA) and Section 112(R) of the Clean Air Act, As Amended," (550B98017). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at <http://www.epa.gov/ncepihom/orderpub.html>.

(F) "Potential Contamination Source" means any facility, use or site that employs an activity or procedure which may potentially contaminate ground water, whether it currently does or not. A pollution source is also a potential contamination source.

(G) "Prohibited Uses" means a land use, activity, or practice that creates a substantial risk of contamination in the specified drinking water source protection zone. Such uses are not permitted.

(H) "Protected aquifer" means a producing aquifer in which the following conditions are met:

1. A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;
2. The Public Drinking Water System provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and
3. The public-supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

(I) "Public Drinking Water System" means a water system, either publicly or privately owned, providing water for human consumption and other domestic uses, which:

1. Has at least 15 service connections, or
2. Serves an average of at least 25 individuals daily at least 60 days of the year. A public water system consisting of at least 8 residential service connections shall be deemed to serve 25 individuals.

(J) “Regulatory Agency” means any governmental agency (local, state, and/or federal) with jurisdiction over drinking water, pollution sources, potential contamination sources and hazardous substances as defined herein.

(K) “Secondary Containment” means a type of system or design standard that is used to provide release detection and prevention, such as trays under containers, floor curbing or other systems designed to hold materials or liquids that may discharge from containers holding a potential contaminant. Examples include a double-walled tank, a double-walled integral piping system, or a single-walled tank or integral piping system that is protected by an enclosed concrete vault, liner, or an impervious containment area.

(L) “Septic Tank/Drain-Field Systems” means a wastewater system, which is comprised of a septic tank and a drain-field, which accepts wastewater from buildings or facilities for surface or subsurface treatment and disposal.

(M) “Time of Travel Distance” The distance that groundwater will travel in a specified time. This distance is generally a function of the permeability and slope of the aquifer. Time of Travel is determined from hydrological studies and is approved by the State Department of Environmental Quality, Division of Drinking Water.

(N) “Unprotected aquifer” means any aquifer that does not meet the definition of a protected aquifer.

(O) “Wellhead” means the upper terminal of a well, including adapters, ports, seals, valves and other attachments.

SECTION 3. RESPONSIBILITY OF PUBLIC DRINKING WATER SYSTEMS. It shall be the responsibility of the Public Drinking Water Systems of Duchesne County to submit a drinking water source protection plan to the Utah Division of Drinking Water pursuant to state administrative rule. Once the Division of Drinking Water has accepted said plan, the Public Drinking Water System or the Division of Drinking Water shall provide Duchesne County with electronic data and maps showing the Drinking Water Source Protection Zones that have been established.

SECTION 4. ESTABLISHMENT OF DRINKING WATER SOURCE PROTECTION ZONES. There are hereby established use districts to be known as Drinking Water Source Protection Zones as identified and described below:

(A) Zone One is the area within a 100-foot radius from a wellhead or spring source.

(B) Zone Two is the area within a 250-day groundwater time of travel distance to a wellhead or spring source, the boundary of the aquifer(s) which supplies water to the groundwater source, or the groundwater divide, whichever is closer, as specified on the “Drinking Water Source Protection Zone Map” on file with the County.

The boundaries of the drinking water source protection zones are shown on the “Drinking Water Source Protection Zone Map” on file with the County, which is incorporated and made part of this ordinance by reference. Due to the sensitivity of such data, the map shall be made available only through a GRAMA request. It shall be the responsibility of the Public Drinking Water System to notify the County and the Culinary Water Authority of any amendments to these maps.

SECTION 5. PERMITTED USES. The following land uses shall be permitted within drinking water source protection zones:

(A) Any land use permitted within existing agricultural, residential and commercial districts so long as uses conform to the rules and regulations of the regulatory agencies and this Ordinance. Applicable rules include, but are not limited to: Utah Administrative Rule R309-600 and rules adopted by the Culinary Water Authority and the Environmental Protection Agency.

(B) Any other open land use where any building located on the property is incidental and accessory to the primary open land use.

(C) Any land use established before the effective date of this Ordinance, and uses incidental and accessory to such use, may be continued in the same manner thereafter, provided that such use is not determined by any court of competent jurisdiction to be a nuisance or health hazard under the provisions of federal, state, and/or local laws or regulations.

SECTION 6. PROHIBITED USES. The following land uses or conditions established after the effective date of this Ordinance are hereby prohibited within drinking water source protection zones:

(A) Zone One (for all aquifer types) - The location of an uncontrolled potential contamination source or pollution sources as defined herein.

(B) Zone Two (in unprotected aquifers) - The location of pollution sources as defined herein, unless their contaminated discharges are controlled with design standards which prevent contaminated discharges to ground water.

SECTION 7. ALLEGED OVERLY PROTECTIVE ZONES. If a party disagrees with the boundaries of a drinking water source protection zone, such boundaries may be disputed according to the following procedure:

(A) Applicant submits written comments to the Public Drinking Water System stating the reasons that the protection zone boundaries are being disputed.

(B) If the Public Drinking Water System concurs, it may authorize a new hydrogeologic investigation at the expense of the one disputing the delineations or elect to conduct a new hydrogeologic investigation at its own expense, or by negotiating a sharing of expenses, if it appears that the boundary was established without considering geologic/hydrogeologic data.

(C) If the Public Drinking Water System declines to authorize a new hydrogeologic investigation, the applicant may appeal this determination to the Duchesne County Commissioners. In the event that the County authorizes a new investigation, it shall be conducted at the expense of the applicant or at the negotiated expense of the parties.

(D) Upon completion, the new hydrogeologic investigation shall be submitted to the Utah Division of Drinking Water for review.

(E) If the Division of Drinking Water finds that the new hydrogeologic investigation is sufficiently protective and meets the requirements of a delineation report according to the Utah Drinking Water Source Protection for Ground Water Sources Rule (R309-600, Utah Administrative Code), the county may enforce this ordinance according to the new hydrogeologic investigation.

SECTION 8. ADMINISTRATION. The policies and procedures for administration of any drinking water source protection zone established under this ordinance, including nonconforming uses, exceptions, enforcement and penalties, shall be the same as provided in the existing zoning ordinance for Duchesne County, as presently enacted and as may be amended after the date of this Ordinance. Exception: the applicable land use authority cannot grant a variance to the requirements of this Ordinance until the request is reviewed and the Culinary Water Authority and Public Drinking Water System provide a recommendation. If it is necessary to have additional expertise to evaluate the variance, it shall be at the expense of the entity requesting the variance.

If there are non-compliant potential contamination sources found in the drinking water source protection zones that cannot be resolved by the Public Drinking Water System, such matters shall be referred to the applicable regulatory agency for enforcement.

SECTION 9. ENFORCEMENT. The Public Drinking Water System may seek enforcement of this ordinance in District Court if:

(A) After providing notice of a violation to the County, the County notifies the Public Drinking Water System within ten (10) working days that it will not seek enforcement of the ordinance; or

(B) The County does not seek enforcement within two (2) days of a notice of violation stating that the violation may cause irreparable harm to the groundwater source.

SECTION 10. APPLICABILITY. The applicability of this ordinance extends to both incorporated and unincorporated sections of the County, unless an incorporated municipality within the County enacts an ordinance in accordance with Utah Code Section 19-4-113 and/or Utah Code Section 10-8-15.

SECTION 11. APPEALS. Any party aggrieved by a decision made by the Duchesne County Community Development Administrator in the administration of this Ordinance may appeal to the Duchesne County Planning Commission. Appeals of the Planning Commission may be made to the Duchesne County Commissioners. Appeals of the Duchesne County Commissioners may be made to District Court.

SECTION 12. AUTHORIZED OFFICERS. The officers of Duchesne County are hereby authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance.

SECTION 13. SURVIVAL CLAUSE. If any one or more sections, sentences, clauses or parts of this ordinance shall, for any reason, be held invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this ordinance, but shall be confined in its operation to the specific sections, sentences, clauses or parts of this ordinance so held unconstitutional or invalid; and the inapplicability and invalidity of any section, sentence, clause or the part of this ordinance shall not prejudice in any way the applicability and validity of this ordinance in any other instance.

SECTION 14. EFFECTIVE DATE. This Ordinance shall become effective immediately upon passage.

DATED this 13th day of April, 2009.

ATTEST:

DUCHESNE COUNTY
BOARD OF COMMISSIONERS


Diane Freston
County Clerk/Auditor


Chairman


Commissioner

Commissioner